

1 LAURENCE F. PULGRAM (CSB NO. 115163)

[lpulgram@fenwick.com](mailto:lpulgram@fenwick.com)

2 ALBERT L. SIEBER (CSB NO. 233482)

[asieber@fenwick.com](mailto:asieber@fenwick.com)

3 LIWEN A. MAH (CSB NO. 239033)

[lmah@fenwick.com](mailto:lmah@fenwick.com)

4 FENWICK & WEST LLP

555 California Street, 12th Floor

5 San Francisco, CA 94104

Telephone: (415) 875-2300

6 Facsimile: (415) 281-1350

7 PATRICK E. PREMO (CSB NO. 184915)

[ppremo@fenwick.com](mailto:ppremo@fenwick.com)

8 DENNIS M. FAIGAL (CSB NO. 252829)

[dfaigal@fenwick.com](mailto:dfaigal@fenwick.com)

9 FENWICK & WEST LLP

Silicon Valley Center

10 801 California Street

Mountain View, CA 94041

11 Telephone: (650) 988-8500

12 Facsimile: (650) 938-5200

Attorneys for Plaintiff SUCCESSFACTORS, INC.

14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 OAKLAND DIVISION

18 SUCCESSFACTORS, INC.,

19 Plaintiff,

20 v.

21 SOFTSCAPE, INC.,

22 Defendant.

Case No. CV 08 1376 CW

**MOTION FOR ADMINISTRATIVE RELIEF  
TO FILE MATERIALS RECENTLY  
PRODUCED BY GOOGLE, INC. PURSUANT  
TO THE SUBPOENA PREVIOUSLY  
AUTHORIZED BY THE COURT; MOTION  
TO SEAL**

24 ///

25 ///

26 ///

27 ///

28 ///

1 Pursuant to Civil Local Rules 7-3(d), 7-11, and 79-5, Plaintiff SuccessFactors, Inc.  
2 (“SuccessFactors”) hereby moves the Court for an Order permitting SuccessFactors to file, for the  
3 Court’s consideration, specific materials produced by third party Google, Inc. (“Google”) pursuant to the subpoena authorized by this Court on March 19, 2008. *See* Docket No. 38. These  
4 materials were produced by Google after SuccessFactors filed its Reply in this action.  
5 SuccessFactors further moves the Court for an Order permitting Exhibits B and C to be filed  
6 under seal because of the confidential customer information therein.  
7

### 8 **BACKGROUND**

9 The information to be submitted reflects that the Softscape, Inc. (“Softscape”) Presentation at issue in this case was sent to over five hundred e-mail addresses from “John  
10 Anonymous” using Google e-mail account hcmknowledge2008a@gmail.com. On March 17,  
11 2008, SuccessFactors filed a motion requesting the Court’s permission to issue subpoenas to  
12 Google, Inc. (“Google”) and the internet service provider that facilitated the sending of e-mails  
13 containing the Presentation. The purpose of that motion was to ascertain the identity of the person  
14 who sent those e-mails to SuccessFactors’ customers. Softscape did not oppose the motion. On  
15 March 19, 2008, the Court directed the issuance of subpoenas.  
16

17 On March 22 and March 25, 2008, Google provided some information responsive to the  
18 subpoena. Google provided a log showing when “John Anonymous” created the  
19 hcmknowledge2008a@gmail.com account, was accessing that account, and last checked the  
20 account. Declaration of Liwen Mah in Support of Motion for Administrative Relief (“Mah  
21 Decl.”) ¶ 2, Exh. A. When the times in that log are converted to Eastern Standard Time, they  
22 reflect creation of and transmission from the Google mail account on the evening of March 4,  
23 2008, the same date that customers have indicated they received it. *See id.*

24 Google also provided a list of e-mail header information showing transmissions to and  
25 from the hcmknowledge2008a@gmail.com account. *Id.* ¶ 3, Exhs. B & C. The header  
26 information show e-mails being sent to over five hundred e-mail recipients, including a mix of  
27 individuals and group mailing lists. Google’s log shows that on the night when those recipients  
28 received the e-mails, “John Anonymous” was accessing his Google mail account from the IP

1 address 74.94.170.178. This IP address corresponds to a Courtyard Marriott hotel in Waltham,  
2 Massachusetts, a short distance from Defendant's headquarters. Mah Decl. ¶ 4, Exh. D.

3 **MOTION FOR CONSIDERATION OF NEW MATERIAL**

4 Exhibits A through C of the Mah Declaration are responsive to this Court's March 19,  
5 2008 Order and the related subpoena on Google. The information therein is probative of both the  
6 scale of the distribution of the Presentation and the proximity of the sender to Defendant's  
7 location. Because the Presentation was e-mailed from a location very near Defendant's  
8 headquarters, it is extremely likely that Defendant's employee or agent was involved.

9 The fact that hundreds of e-mail addresses received the gmail of the Presentation is also  
10 relevant to the appropriate scope of injunctive relief requested. With so many customers and  
11 prospects already having the Presentation from an anonymous source, Defendant's continuing  
12 assertion in the press and e-mails that the Presentation is true and "based on substantiated facts"  
13 serves to reinforce the false accusations to which they already have received access. The vast  
14 number of recipients demonstrates harm to Plaintiff's goodwill much greater than Plaintiff could  
15 previously demonstrate.

16 Because the responsive information from Google is probative of Plaintiff's likelihood of  
17 success and irreparable harm, Plaintiff respectfully asks the Court to take consideration of the  
18 exhibits to the Mah Declaration.

19 SuccessFactors' counsel has conferred with counsel for Defendant Softscape about  
20 stipulating to the filing of these materials. Defendant's counsel indicated that Defendant would  
21 not oppose the filing of these materials under seal, but the parties continue to confer regarding  
22 whether Exhibits B and C to the Mah Declaration should be designated as being for Attorneys'  
23 Eyes Only.

24 **MOTION TO SEAL**

25 Because Exhibits B and C to the Mah Declaration contain personal information  
26 identifying specific employees of SuccessFactors customers and prospects, Plaintiff moves the  
27 Court for an Order allowing Plaintiff to file such exhibits under seal.

28 ///

1 The specific documents at issue are as follows:

- 2 1. Exhibit B is an excerpt of the e-mail header information that shows individual  
3 recipients of the e-mailed Presentation, including the individual e-mail addresses  
4 of those recipients.
- 5 2. Exhibit C is an electronic copy of the full e-mail header information produced by  
6 Google in response to the Court's March 19, 2008 Order.

7 The e-mail addresses for customers and prospects are confidential and sensitive  
8 commercial information. In addition, disclosure of individual's e-mail addresses would likely  
9 impinge on those individuals' privacy rights. The public accessibility of such information would  
10 cause irreparable, competitive, and commercial harm to SuccessFactors and the individuals whose  
11 personal addresses would be disclosed. As such, SuccessFactors respectfully requests that the  
12 Court allow it to file the above exhibits in their entirety under seal per Civil Local Rule 79-5.

13 As noted above, the parties are conferring about the proper confidentiality designation for  
14 Exhibits B and C. Upon reaching agreement, Plaintiff will serve Exhibits B and C on Defendant.

15  
16  
17 Respectfully submitted,

18 Dated: March 26, 2008

FENWICK & WEST LLP

19  
20 By: /s/ Liwen Mah  
21 Liwen Mah  
22 Attorneys for Plaintiff SUCCESSFACTORS, INC.  
23  
24  
25  
26  
27  
28

1 LAURENCE F. PULGRAM (CSB NO. 115163)  
[lpulgram@fenwick.com](mailto:lpulgram@fenwick.com)

2 ALBERT L. SIEBER (CSB NO. 233482)  
[asieber@fenwick.com](mailto:asieber@fenwick.com)

3 LIWEN A. MAH (CSB NO. 239033)  
[lmah@fenwick.com](mailto:lmah@fenwick.com)

4 FENWICK & WEST LLP  
555 California Street, 12th Floor  
5 San Francisco, CA 94104  
Telephone: (415) 875-2300  
6 Facsimile: (415) 281-1350

7 PATRICK E. PREMO (CSB NO. 184915)  
[ppremo@fenwick.com](mailto:ppremo@fenwick.com)

8 DENNIS M. FAIGAL (CSB NO. 252829)  
[dfaigal@fenwick.com](mailto:dfaigal@fenwick.com)

9 FENWICK & WEST LLP  
Silicon Valley Center  
10 801 California Street  
Mountain View, CA 94041  
11 Telephone: (650) 988-8500  
Facsimile: (650) 938-5200

12 Attorneys for Plaintiff SUCCESSFACTORS, INC.

13  
14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 OAKLAND DIVISION

17  
18 SUCCESSFACTORS, INC.,

19 Plaintiff,

20 v.

21 SOFTSCAPE, INC.,

22 Defendant.

Case No. CV 08 1376 CW

**[PROPOSED] ORDER GRANTING MOTION  
FOR ADMINISTRATIVE RELIEF TO FILE  
MATERIALS RECENTLY PRODUCED BY  
GOOGLE, INC. PURSUANT TO THE  
SUBPOENA PREVIOUSLY AUTHORIZED BY  
THE COURT AND MOTION TO SEAL**

23 Having considered Plaintiff SuccessFactors, Inc.'s Motion for Administrative Relief to  
24 File Materials Recently Produced by Google, Inc. Pursuant to the Subpoena Previously  
25 Authorized by the Court and good cause appearing, the Court hereby **GRANTS** Plaintiff's  
26 motion.

27 Having considered Plaintiff's motion to file under seal Exhibits B and C to the  
28 Declaration of Liwen Mah in Support of Plaintiff's Motion for Administrative Relief to File

1 Materials Recently Produced by Google, Inc. Pursuant to the Subpoena Previously Authorized by  
2 the Court (“Mah Declaration”), and good cause appearing, the Court hereby **ORDERS** the  
3 following to be filed under seal:

- 4 1. Exhibits B and C to the Mah Declaration.

5  
6 **IT IS SO ORDERED.**

7  
8 DATED: \_\_\_\_\_

\_\_\_\_\_  
Honorable Claudia Wilken  
United States Federal Court Judge

FENWICK & WEST LLP  
ATTORNEYS AT LAW  
MOUNTAIN VIEW